IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 52 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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COMMISSIONER OF INCOME-TAX

Versus

CADILA CHEMICALS PVT LTD

Appearance:

1. INCOME TAX REFERENCE No. 52 of 1989

MR MANISH R BHATT for Petitioner No. 1

..... for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 18/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question is referred for our opinion in respect of assessment year 1983-84:-

"Whether, the Appellate Tribunal is right in law and on facts in holding the export cash assistance of Rs.52,588/- received by the assessee was a capital receipt not liable to tax?"

2. We have heard Mr MR Bhatt, learned Sr. Standing Counsel for the revenue. Though served, none appears for the respondent- assessee.

3. Our attention is invited to the provisions of section 28(iiib) of the Act, which read as under:-

28. The following income shall be chargeable to income-tax under the head Profits and gains of business or profession",-

....

[(iiib)] cash assistance (by whatever name called) received or receivable by any person against exports under any scheme of the Government of India;]

....

This clause was inserted by Finance Act, 1990 w.e.f. 1-4-1967. It is thus clear that cash assistance (by whatever name called) received or receivable by any person against exports under any scheme of the Government of India shall be chargeable to income tax under the head 'profits and gains of business or profession' under the aforesaid statutory provision. The export cash assistance of Rs.52,588/- received by the assessee was under such export promotion scheme. Hence, the same was clearly a revenue income.

4. The same view has been taken by this Court in ITR No.133 of 1989 decided on 24-6-2002.

Accordingly, our answer to the question referred to us is in the negative i.e. in favour of the revenue and against the assessee.

5. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah,J) (K.A. Puj,J)

zgs/-